

## **APPENDIX 3**

### **NEW JERSEY ADMINISTRATIVE PROCEDURE ACT (as codified in New Jersey Statutes Annotated)**

#### **52:14B-1. Short title**

This act shall be known and may be cited as the "Administrative Procedure Act."

#### **52:14B-2. Definitions**

As used in this act:

(a) "State agency" or "agency" shall include each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor.

(b) "Contested case" means a proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing, but shall not include any proceeding in the Division of Taxation, Department of the Treasury, which is reviewable de novo by the Tax Court.

(c) "Administrative adjudication" or "adjudication" includes any and every final determination, decision or order made or rendered in any contested case.

(d) "The head of the agency" means and includes the individual or group of individuals constituting the highest authority within any agency authorized or required by law to render an adjudication in a contested case.

(e) "Administrative rule" or "rule," when not otherwise modified, means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intraagency and interagency statements; and (3) agency decisions and findings in contested cases.

(f) "License" includes the whole or part of any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law.

(g) "Secretary" means the Secretary of State.

(h) "Director" means the Director and Chief Administrative Law Judge of the Office of Administrative Law, unless otherwise indicated by context.

### **52:14B-3. Additional rule-making requirements**

In addition to other rule-making requirements imposed by law, each agency shall:

- (1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;
- (2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures;
- (3) make available for public inspection all final orders, decisions, and opinions, in accordance with the provisions of chapter 73 of the laws of 1963 as amended and supplemented (C.47:1A-1 et seq.);
- (4) publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rule-making activities for the next six months. The calendar shall include the name of the agency and agency head, a citation to the legal authority authorizing the rule-making action and a synopsis of the subject matter and the objective or purpose of the agency's proposed rules.

In a manner prescribed by the Director of the Office of Administrative Law, each agency shall appropriately publicize that copies of its calendar are available to interested persons for a reasonable fee. The amount of the fee shall be set by the director.

An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rule-making activities. Any amendment which involves the addition of any rule-making activity to an agency's calendar shall provide that the agency shall take no action on that matter until at least 45 days following the first publication of the amended calendar in which the announcement of that proposed rule-making activity first appears.

The provisions of this paragraph shall not apply to rule-making:

- (a) required or authorized by federal law when failure to adopt rules in a timely manner will prejudice the State;
- (b) subject to a specific statutory authorization requiring promulgation in a lesser time period;
- (c) involving an imminent peril subject to provisions of subsection (c) of section 4 of P.L.1968, c.410 (C.52:14B-4);
- (d) for which the agency has published a notice of pre-proposal of a rule in accordance with rules adopted by the Director of the Office of Administrative Law; or

- (e) for which a comment period of at least 60 days is provided.

A proposed rule falling within any of the exceptions to the provisions of this subsection shall so indicate in the notice of proposal.

### **52:14B-3.1. Legislative findings and declarations**

The Legislature finds and declares that:

- a. Under the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) all interested persons are afforded reasonable opportunity to submit data, views or arguments, orally or in writing, during any proceedings involving a permit decision;
- b. Persons who have particularized property interests or who are directly affected by a permitting decision have constitutional and statutory rights and remedies;
- c. To allow State agencies without specific statutory authorization to promulgate rules and regulations which afford third parties, who have no particularized property interests or who are not directly affected by a permitting decision, to appeal that decision would give rise to a chaotic unpredictability and instability that would be most disconcerting to New Jersey's business climate and would cripple economic development in our State; and
- d. It is, therefore, altogether fitting and proper, and within the public interest, to prohibit State agencies from promulgating rules and regulations which would allow third party appeals of permit decisions unless specifically authorized to do so by federal law or State statute.

### **52:14B-3.2. Definitions**

As used in this act:

"Permit decision" means a decision by a State agency to grant, deny, modify, suspend or revoke any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"State agency" or "agency" means and includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, councils, authorities, offices or officers within any such departments which are authorized to grant, deny, modify, suspend, or revoke a license, permit, certificate, approval, chapter, registration or other form of permission required by law, other than a license or certificate issued to an individual for the practice of a profession or occupation.

"Third party" means any person other than:

- a. An applicant for any agency license, permit, certificate, approval, chapter, registration or other form of permission required by law;
- b. A State agency; or

c. A person who has particularized property interest sufficient to require a hearing on constitutional or statutory grounds.

**52:14B-3.3. Prohibition against rules and regulations allowing third party to appeal permit decision; exception if allowed by statute or federal law**

a. Except as otherwise required by federal law or by a statute that specifically allows a third party to appeal a permit decision, a State agency shall not promulgate any rule or regulation that would allow a third party to appeal a permit decision.

b. Nothing herein shall be construed as abrogating or otherwise limiting any person's constitutional and statutory rights to appeal a permit decision.

**52:14B-4. Notice and hearing; compliance with act for rule to be valid; notice of intent of proposed rule-making proceeding; petition by interested person for promulgation, amendment or repeal of rule**

(a) Prior to the adoption, amendment, or repeal of any rule, except as may be otherwise provided, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a press office to cover the State House Complex, and made available electronically through the largest nonproprietary cooperative public computer network. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so, and inform those persons most likely to be affected by or interested in the intended action. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, and an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3); and

(3) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting

the proposed rule. If within 30 days of the publication of the proposed rule sufficient public interest is demonstrated in an extension of the time for submissions, the agency shall provide an additional 30 day period for the receipt of submissions by interested parties. The agency shall not adopt the proposed rule until after the end of that 30 day extension.

The agency shall conduct a public hearing on the proposed rule at the request of a committee of the Legislature, or a governmental agency or subdivision, or if sufficient public interest is shown, provided such request is made to the agency within 30 days following publication of the proposed rule in the Register. The agency shall provide at least 15 days' notice of such hearing, which shall be conducted in accordance with the provisions of subsection (g) of this section.

The head of each agency shall adopt as part of its rules of practice adopted pursuant to section 3 of P.L.1968, c.410 (C.52:14B-3) definite standards of what constitutes sufficient public interest for conducting a public hearing and for granting an extension pursuant to this paragraph.

(4) Prepare for public distribution a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agency's response to the data, views and arguments contained in the submissions.

(b) A rule prescribing the organization of an agency may be adopted at any time without prior notice or hearing. Such rules shall be effective upon filing in accordance with section 5 of this act or upon any later date specified by the agency.

(c) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt the rule. The rule shall be effective for a period of not more than 60 days unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rule-making procedures.

(d) No rule hereafter adopted is valid unless adopted in substantial compliance with this act. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this act shall be commenced within one year from the effective date of the rule.

(e) An agency may file a notice of intent with respect to a proposed rule-making proceeding with the Office of Administrative Law, for publication in the New Jersey Register at any time prior to the formal notice of action required in subsection (a) of this section. The notice shall be for the purpose of eliciting the views of interested parties on an action prior to the filing of a formal rule proposal. An agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule-making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule-making.

(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

- (1) The substance or nature of the rule-making which is requested;
- (2) The reasons for the request and the petitioner's interest in the request;
- (3) References to the authority of the agency to take the requested action.

The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

Within 60 days following receipt of any such petition, the agency shall either; (i) deny the petition, giving a written statement of its reasons; (ii) grant the petition and initiate a rule-making proceeding within 90 days of granting the petition; or (iii) refer the matter for further deliberations which shall be concluded within 90 days of referring the matter for further deliberations. Upon conclusion of such further deliberations, the agency shall either deny the petition and provide a written statement of its reasons or grant the petition and initiate a rule-making proceeding within 90 days. Upon the receipt of the petition, the agency shall file a notice stating the name of the petitioner and the nature of the request with the Office of Administrative Law for publication in the New Jersey Register. Notice of formal agency action on such petition shall also be filed with the Office of Administrative Law for publication in the Register.

If an agency fails to act in accordance with the time frame set forth in the preceding paragraph, upon written request by the petitioner, the Director of the Office of Administrative Law shall order a public hearing on the rule-making petition and shall provide the agency with a notice of the director's intent to hold the public hearing if the agency does not. If the agency does not provide notice of a hearing within 15 days of the director's notice, the director shall schedule and provide the public with a notice of that hearing at least 15 days prior thereto. If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5), or an independent contractor assigned by the director. The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition, a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in subsection (g) of section 4 of P.L.1968, c.410 (C.52:14B-4), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition. This report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rule-making.

- (g) All public hearings shall be conducted by a hearing officer, who may be an official of

the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost, which shall be that of the agency where the petition for rule-making originated.

**52:14B-4.1. Proposed rule; submission to legislature; referral to appropriate standing reference committee**

Every rule hereafter proposed by a State agency shall be submitted by the Office of Administrative Law to the Senate and General Assembly within two business days of its receipt by the office, and the President of the Senate and the Speaker of the General Assembly shall immediately refer the proposed rule to the appropriate committee in each House.

**52:14B-4.1a. Director determination of compliance with rules; standard of clarity; application**

a. The director is authorized to refuse to accept from an agency a notice of proposal or notice of adoption which adopts, readopts or amends a rule or regulation, if the director determines that the rule or regulation and its accompanying materials do not comply satisfactorily with the interagency rules of the director. The State agency shall not be authorized to adopt, readopt or amend a rule or regulation where notice of proposal or notice of adoption is refused by the director in accordance with this provision, except by proposing the adoption, readoption or amendment in compliance with agency rules.

b. The Office of Administrative Law, upon its review and determination, shall not accept for publication any notice of intention to adopt, readopt or amend a rule or regulation, a proposed rule, summary of the proposed rule, regulatory impact analysis, or other accompanying materials which lacks a standard of clarity.

As used in this section, "standard of clarity" means the document is written in a reasonably simple and understandable manner which is easily readable. The document is drafted to provide adequate notice to affected persons and interested persons with some subject matter expertise. The document conforms to commonly accepted principles of grammar. The document contains sentences that are as short as practical, and is organized in a sensible manner. The document does not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language. Terms of art and words with multiple meanings that may be misinterpreted are defined. The document is sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

c. The provisions of subsection b. of this section shall not apply to any administrative

rule that a State agency adopts to conform to a model code, federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State agency shall append to the proposed rule for publication a written statement describing the rule which complies with subsection b. of this section.

d. The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the repromulgation, without amendment, of any rule or provision of a rule.

**52:14B-4.3. Disapproval or delay of effective date within 60 days of submission; concurrent resolution**

If, pursuant to Article V, section 4, paragraph 6 of the New Jersey Constitution, the Senate and General Assembly adopt a concurrent resolution invalidating a rule or regulation, in whole or in part, or prohibiting a proposed rule or regulation, in whole or in part, from taking effect, the presiding officer of the House of final adoption shall cause the concurrent resolution to be transmitted to the Office of Administrative Law for publication in the New Jersey Register and the New Jersey Administrative Code as an annotation to the rule or regulation.

**52:14B-4.8. Votes on concurrent resolutions; recordation**

A vote by the Senate or General Assembly on a concurrent resolution on any action authorized by this act shall be a recorded vote.

**52:14B-4.9. Proposed rule which revises, rescinds or replaces proposed, existing or suspended rule as new rule**

Any rule proposed by a State agency which revises, rescinds or replaces either (1) any proposed or existing rule or (2) any rule which has been suspended shall be considered as a new rule and shall be subject to the provisions of this act and the act to which it is a supplement.

**52:14B-5. Filing of rules; effective date; effect of publication**

(a) Each agency shall file with the Director and Chief Administrative Law Judge of the Office of Administrative Law a certified copy of each rule adopted by it.

(b) Deleted by amendment, P.L.2001, c.5.

(c) The director shall: (1) accept for filing or publication any rule duly adopted and submitted by any agency pursuant to this act and which meets all of the requirements and standards of P.L.2001, c.5 (C.52:14B-4.1a et al.); (2) endorse upon the certified copy of each rule accepted for filing pursuant to this act the date and time upon which such rule was filed; (3) maintain the certified copy of each rule so filed in a permanent register open to public inspection; and (4) accept for publication a duly adopted concurrent resolution of the Legislature invalidating any rule or regulation, in whole or in part, or prohibiting the proposed rule or regulation, in whole or in part, from taking effect.

(d) The filing of a certified copy of any rule shall be deemed to establish the rebuttable presumptions that: (1) it was duly adopted; (2) it was duly submitted for prepublication and made available for public inspection at the hour and date endorsed upon it; (3) all requirements



of this act and of interagency rules of the director relative to such rule have been complied with; (4) its text is the text of the rule as adopted. Judicial notice shall be taken of the text of each rule, duly filed.

(e) The publication of a rule in the New Jersey Administrative Code or the New Jersey Register shall be deemed to establish the rebuttable presumption that the rule was duly filed and that the text of the rule as so published is the text of the rule adopted. Judicial notice shall be taken of the text of each rule published in the New Jersey Administrative Code or the New Jersey Register.

#### **52:14B-5.1. Expiration of rules; readoption of rules**

a. Every rule in effect on the enactment date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire five years following the effective date of this act unless a sooner expiration date has been established for the rule.

b. Every rule adopted on or after the effective date of P.L.2001, c.5 (C.52:14B-4.1a et al.) shall expire five years following the effective date of the rule unless a sooner expiration date has been established for the rule. The expiration date shall be included in the adoption notice of the rule in the New Jersey Register and noted in the New Jersey Administrative Code.

c. An agency may continue in effect an expiring rule for a five year period by duly proposing and readopting the rule prior to its expiration. Upon the filing of a notice of proposed readoption, the expiration date of the rule shall be extended for 180 days, if such notice is filed prior to the expiration of the rule.

d. The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

e. This section shall not apply to any rule repealing a rule or any rule prescribed by federal law or whose expiration would violate any other federal or State law, in which case the federal or State law shall be cited in the publication of the rule.

#### **52:14B-7. New Jersey Administrative Code; New Jersey Register; publication**

(a) The director shall compile, index, and publish a publication to be known as the "New Jersey Administrative Code," containing all effective rules adopted by each agency. The code shall be periodically supplemented or revised, and shall remain under the control and direction of the Office of Administrative Law regardless of the method or medium chosen to store, maintain or distribute it.

(b) The director shall publish a bulletin, at least monthly, to be known as the "New Jersey Register" setting forth: (1) the text of all rules filed during the preceding month, and (2) such notices as shall have been submitted pursuant to this act.

(c) The director shall issue annually a schedule for the filing of documents for publication in the New Jersey Register. The director may omit from the New Jersey Register or compilation any rule the publication of which would be unduly cumbersome, expensive, or otherwise

inexpedient, if the rule in printed or processed form is made available by the adopting agency on application thereto, and if the register or code contains a notice stating the general subject matter of the omitted rule and stating the manner in which a copy thereof may be obtained. The director may include within the New Jersey Register and the New Jersey Administrative Code any document, material or information which the director may deem appropriate and convenient.

(d) At least one copy of the New Jersey Administrative Code and copies of the New Jersey Register and compilations shall be made available upon request to the Governor, the head of each principal department, the Office of Legislative Services, the State Library and to such other State agencies and public officials as the director may designate free of charge. The director shall provide for the publication, sale and distribution of the Code and Register to the public by whatever means, including entering into contractual or licensing arrangements, most likely to ensure the widest dissemination possible.

(e) (Deleted by amendment, P.L.1993, c.343).

(f) The director may determine the order in which such rules or any parts thereof are to be presented in the New Jersey Register and the New Jersey Administrative Code; the director may number or renumber the parts, paragraphs and sections into which such rules may be divided; the director may further divide or combine existing parts, paragraphs and sections and may provide for appropriate digests, indices and other related material. The director shall not, however, change the language of any existing rule excepting a title or explanatory caption; but shall recommend any such changes as the director may deem advisable to the administrative agency authorized to adopt such rule. The director may periodically review the New Jersey Administrative Code for expired rules and shall remove such rules upon notice to the appropriate agency head.

(g) The director is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this act.

#### **52:14B-8. Declaratory rulings**

Subject to the provisions of section 4(b) and 4(e) of chapter 20, laws of 1944, as amended and supplemented (C. 52:17A-4b and 4e), an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court. Nothing herein shall affect the right or practice of every agency in its sole discretion to render advisory opinions.

#### **52:14B-9. Notice and hearing in contested cases**

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include in addition to such other information as may be deemed

appropriate:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(c) Opportunity shall be afforded all parties to respond, appear and present evidence and argument on all issues involved.

(d) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, or consent order.

(e) Oral proceedings or any part thereof shall be transcribed on request of any party at the expense of such party.

(f) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(g) Unless otherwise provided by any law, agencies may place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing.

**52:14B-10. Evidence; judicial notice; recommended report and decision; final decision; effective date**

In contested cases:

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted formally by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The administrative law judge may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either (i) necessitate undue consumption of time or (ii) create substantial danger of undue prejudice or confusion. The administrative law judge shall give effect to the rules of privilege recognized by law. Any party in a contested case may present his case or defense by oral and documentary evidence, submit rebuttal evidence and conduct such cross-examination as may be required, in the discretion of the administrative law judge, for a full and true disclosure of the facts.

(b) Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the

agency or administrative law judge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or administrative law judge may be utilized in the evaluation of the evidence, provided this is disclosed of record.

(c) All hearings of a State agency required to be conducted as a contested case under this act or any other law shall be conducted by an administrative law judge assigned by the Director and Chief Administrative Law Judge of the Office of Administrative Law, except as provided by this amendatory and supplementary act. A recommended report and decision which contains recommended findings of fact and conclusions of law and which shall be based upon sufficient, competent, and credible evidence shall be filed, not later than 45 days after the hearing is concluded, with the agency in such form that it may be adopted as the decision in the case and delivered or mailed, to the parties of record with an indication of the date of receipt by the agency head; and an opportunity shall be afforded each party of record to file exceptions, objections, and replies thereto, and to present argument to the head of the agency or a majority thereof, either orally or in writing, as the agency may direct. The head of the agency, upon a review of the record submitted by the administrative law judge, shall adopt, reject or modify the recommended report and decision no later than 45 days after receipt of such recommendations. In reviewing the decision of an administrative law judge, the agency head may reject or modify findings of fact, conclusions of law or interpretations of agency policy in the decision, but shall state clearly the reasons for doing so. The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record. Unless the head of the agency modifies or rejects the report within such period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the agency. The recommended report and decision shall be a part of the record in the case. For good cause shown, upon certification by the director and the agency head, the time limits established herein may be subject to extension.

(d) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated and shall be based only upon the evidence of record at the hearing, as such evidence may be established by rules of evidence and procedure promulgated by the director.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The final decision may incorporate by reference any or all of the recommendations of the administrative law judge. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(e) Except where otherwise provided by law, the administrative adjudication of the agency shall be effective on the date of delivery or on the date of mailing, of the final decision to the parties of record whichever shall occur first, or shall be effective on any date after the date of delivery or mailing, as the agency may provide by general rule or by order in the case. The date of delivery or mailing shall be stamped on the face of the decision.

#### **52:14B-10.1 Adjudication of cases under the Tenure Employees Hearing Law**

Any statute, rule or regulation to the contrary notwithstanding, all contested cases, as defined in section 2 of P.L.1968, c.410 (C.52:14B-2), except those cases in which criminal charges are also filed, arising under the Tenure Employees Hearing Law, article 2 of chapter 6 of Title 18A of the New Jersey Statutes, and referred to the Office of Administrative Law shall be adjudicated pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in an expeditious and timely manner except as follows:

a. The discovery process shall begin immediately upon the notice of the referral of the case to the Office of Administrative Law and a discovery request shall be initiated by transmitting the request to a receiving party within 30 days of receipt of the notice of referral. Answers to a discovery request shall be made within 30 days of the receipt of the request, except that if the discovery is available only by motion, the answer shall be due within 30 days of receipt of an order granting the motion. Additional discovery shall be permitted by motion or upon the consent of the parties, but shall be filed with the administrative law judge within 10 days of the filing of the answers to interrogatories. The administrative law judge may extend discovery time by no more than 30 days for disputes over sufficiency, completion or other just cause.

b. The pre-hearing conference shall be held within 30 days of the referral of the case to the Office of Administrative Law.

c. The hearing shall be held within 30 days after the end of the discovery period.

d. Transcripts if ordered by the parties shall be provided within 15 days of the conclusion of the hearing and all briefs shall be submitted to the Administrative Law Judge within 30 days of the conclusion of the hearing or receipt of the transcripts by the parties, whichever is later.

#### **52:14B-11. Revocation or refusal to renew license; hearing**

No agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with the provisions of this act applicable to contested cases. If a licensee has, in accordance with law and agency rules, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with the provisions of this act.

This section shall not apply (1) where a statute provides that an agency is not required to grant

a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or (2) where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a judgment of a court of competent jurisdiction; or (3) where the suspension or refusal to renew is based solely upon failure of the licensee to maintain insurance coverage as required by any law or regulation; or (4) where the suspension or refusal to renew a motor vehicle registration is based upon the failure of the vehicle to be presented for inspection or to satisfy the inspection requirements of chapter 8 of Title 39 of the Revised Statutes.

#### **52:14B-12. Administrative review**

Whenever under statute or agency rule there is a mode of administrative review within an agency, such review shall remain unimpaired and any judicial review shall be from the final action of the agency. The administrative review within the agency need not comply with the requirements for the conduct of contested cases.

#### **52:14B-13. Effect of act on prior proceedings**

Nothing in this act shall be deemed to affect any agency proceeding initiated prior to the effective date hereof.

#### **52:14B-14. Severability**

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

#### **52:14B-15. General repealer**

All acts and parts of acts which are inconsistent with the provisions of this act are, to the extent of such inconsistency, hereby repealed; but such repeal shall not affect pending proceedings.

#### **52:14B-16. Short title**

This act shall be known and may be cited as the "New Jersey Regulatory Flexibility Act."

#### **52:14B-17. Small business defined**

As used in this act, "small business" means any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.

#### **52:14B-18. Approaches to be utilized in development and proposal of rule for adoption**

In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small businesses of different types and of differing sizes. Consistent with the objectives of applicable statutes, the agency shall utilize such approaches as:

- a. The establishment of differing compliance or reporting requirements or timetables that take

into account the resources available to small businesses;

- b. The use of performance rather than design standards; and
- c. An exemption from coverage by the rule, or by any part thereof, for small businesses so long as the public health, safety, or general welfare is not endangered.

**52:14B-19. Regulatory flexibility analysis; proposal of rule for adoption; exception**

In proposing a rule for adoption, the agency involved shall issue a regulatory flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4). Each regulatory flexibility analysis shall contain:

- a. A description of the types and an estimate of the number of small businesses to which the proposed rule will apply;
- b. A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small business is likely to need in order to comply with the requirements;
- c. An estimate of the initial capital costs and an estimate of the annual cost of complying with the rule, with an indication of any likely variation in the costs for small businesses of different types and of differing sizes; and
- d. An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small businesses.

This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small businesses. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L. 1968, c. 410 (C. 52:14B-4).

**52:14B-20. Consideration of series of closely related rules as one**

In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with section 4 of this act.

**52:14B-21. Description of effects of proposed rule**

In complying with the provisions of section 4 of this act, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

**52:14B-22. Legislative policy; agencies to consider applicable federal standards**

It is the declared policy of the State to reduce, wherever practicable, confusion and costs involved in complying with State regulations. Confusion and costs are increased when there are multiple regulations of various governmental entities imposing unwarranted differing standards in the same area of regulated activity. It is in the public interest that State agencies consider

applicable federal standards when adopting, readopting or amending regulations with analogous federal counterparts and determine whether these federal standards sufficiently protect the health, safety and welfare of New Jersey citizens.

**52:14B-23. State agencies to include analysis of applicable federal regulations in publication of rules and regulations that exceed federal requirements**

On or after the effective date of this act, each administrative agency that adopts, readopts or amends any rule or regulation described in section 3 of this act shall, in addition to all the requirements imposed by existing law and regulation, include as part of the initial publication and all subsequent publications of such rule or regulation, a statement as to whether the rule or regulation in question contains any standards or requirements which exceed the standards or requirements imposed by federal law. Such statement shall include a discussion of the policy reasons and a cost-benefit analysis that supports the agency's decision to impose the standards or requirements and also supports the fact that the State standard or requirement to be imposed is achievable under current technology, notwithstanding the federal government's determination that lesser standards or requirements are appropriate.

**52:14B-24. State rules and regulations requiring analysis of federal standards or requirements**

This act shall apply to any rule or regulation that is adopted, readopted or amended under the authority of or in order to implement, comply with or participate in any program established under federal law or under a State statute that incorporates or refers to federal law, federal standards or federal requirements.

**52:14B-25 Definitions**

a. For the purposes of this section:

"State mandate" means a program, service or activity that is to be performed or implemented by a local unit for or on behalf of its residents, which results in an added net cost to the local unit, and which is mandated in any statute enacted by the Legislature either prior to or after the effective date of this act. A "state mandated program" shall not include the following: any activity pertaining to a statute carrying criminal penalties; any mandate required by or arising from a court order or judgment; any program or service which is provided at local option under permissive State laws, rules, regulations or orders; any program which is required by private, special or local laws pursuant to Article IV, Section VII, paragraphs 8 and 10 of the State Constitution; any program required by or arising from an executive order of the Governor in exercising emergency powers granted by law; or any program mandated by federal law, rule, regulation or order.

"Small municipality" shall mean a municipality that has a limited population or geographic area according to criteria promulgated by the Director of the Division of Local Government Services in the Department of Community Affairs.

b. In developing and proposing a rule for adoption, the agency involved shall utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed rule on small municipalities. Consistent with the



objectives of applicable statutes, the agency shall utilize such approaches as:

- (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small municipalities;
- (2) The use of performance rather than design standards; and
- (3) An exemption from coverage by the rule, or by any part thereof, for small municipalities so long as the public health, safety, or general welfare is not endangered, or if an exemption is not a possibility, the use of alternative methods of implementing the requirements of the rule.

c. In proposing a rule for adoption, the agency involved shall issue a State mandate flexibility analysis regarding the rule, which shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each State mandate flexibility analysis shall contain:

- (1) An estimate of the number of small municipalities to which the proposed rule will apply;
- (2) A description of the reporting, record-keeping and other compliance requirements being proposed for adoption, and the kinds of professional services that a small municipality is likely to need in order to comply with the requirements;
- (3) An estimate of the annual cost to a small municipality of complying with the rule; and
- (4) An indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small municipalities.

d. This section shall not apply to any proposed rule which the agency finds would not impose reporting, record-keeping, or other compliance requirements on small municipalities. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

e. In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of complying with the requirements of this section.

f. In complying with the provisions of this section, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or more general descriptive statements, if quantification is not practicable or reliable.

#### **52:14F-1. Establishment; allocation within department of state; office defined**

There is hereby established in the Executive Branch of the State Government the Office of Administrative Law. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Office of Administrative Law is hereby

allocated within the Department of State, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any personnel thereof. As used in this act, "office" shall mean the Office of Administrative Law.

**52:14F-2. Transfer of functions, powers and duties of division of administrative procedure to office of administrative law**

All the functions, powers and duties heretofore exercised by the Division of Administrative Procedure in the Department of State pursuant to the Administrative Procedure Act, P.L.1968, c. 410 (C. 52:14B-1 et seq.) are transferred to and vested in the Office of Administrative Law created by this amendatory and supplementary act.

**52:14F-3 Director**

The head of the office shall be the director who shall be an attorney-at-law of this State for a minimum of five years. The director shall be appointed by the Governor with the advice and consent of the Senate.

The director shall serve for a term of six years. As used in this act, "director" shall mean the Director of the Office of Administrative Law and Chief Administrative Law Judge.

The director shall devote full time to the duties of the office and shall receive an annual salary equal to 89% of the annual salary of a Judge of the Superior Court. Any vacancy occurring in the office of the director shall be filled in the same manner as the original appointment, but for the unexpired term only.

**52:14F-4 Administrative judges; appointment; evaluation; term; reappointment**

Permanent administrative law judges shall be appointed by the Governor with the advice and consent of the Senate to initial terms of one year. During this initial term, each judge shall be subject to a program of evaluation as delineated in section 5 of P.L.1978, c. 67 (C.52:14F-5). First reappointment of a judge after this initial term shall be by the Governor for a term of four years and until the appointment and qualification of the judge's successor.

Administrative law judges nominated by the Governor before July 1, 1981 shall, upon their confirmation by the Senate, serve for terms of five years and until the appointment and qualification of their successors.

Subsequent reappointments of a judge shall be by the Governor with the advice and consent of the Senate to terms of five years and until the appointment and qualification of the judge's successor. The advice and consent of the Senate, as provided in this section, shall be exercised within 45 days after a nomination for appointment has been submitted to the Senate, and if no action has been taken within the 45-day period, the nomination shall be deemed confirmed. This 45-day period shall not apply to any person nominated by the Governor for the position of administrative law judge prior to July 1, 1981.

The annual salary for an administrative law judge during the initial term of one year shall be equal to 75% of the annual salary of a Judge of the Superior Court. The annual salary for a judge during the first year of the first reappointment shall be increased to 78 2/3 % of the annual salary

of a Judge of the Superior Court. Upon receipt of satisfactory annual evaluations, the annual salary for a judge shall be increased to 81 2/3 % of the annual salary of a Judge of the Superior Court for the second year of the first reappointment and to 85% of the annual salary of a Judge of the Superior Court for the third year of the first reappointment. The annual salary shall be 85% of the annual salary of a Judge of the Superior Court for the fourth year of the first reappointment and for each year of subsequent reappointments thereafter.

In addition to salary, an administrative law judge regularly assigned as an assignment judge shall receive \$2,500 annually as additional compensation, and a judge regularly assigned other administrative or supervisory duties shall receive \$1,500 annually as additional compensation.

All administrative law judges, including the Chief Administrative Law Judge, shall be retired upon attaining the age of 70 years.

#### **52:14F-4.1 Applicability of mandatory retirement provisions to judges of the Office of Administrative Law judges**

The mandatory retirement provisions implemented pursuant to this act, P.L.1999, c.380 (C.52:14-15.115 et al.), shall be inapplicable for three years after the effective date of this act to any judge of the Office of Administrative Law who is in service on the effective date of this act.

#### **52:14F-4.2 Continuance of service; judges of the Office of Administrative Law**

Notwithstanding the provisions of this act, P.L.1999, c.380 (C.52:14-15.115 et al.), to the contrary, any judge of the Office of Administrative Law who is 60 years of age or older on the effective date of this act shall be permitted to continue service as a judge until attaining 10 years of service under the "Public Employees' Retirement System Act," P.L.1954, c.84 (C.43:15A-1 et seq.).

#### **52:14F-5 Powers and duties of director and chief administrative law judge**

The Director and Chief Administrative Law Judge of the Office of Administrative Law shall:

- a. Administer and cause the work of the office to be performed in such manner and pursuant to such program as may be required or appropriate;
- b. Organize and reorganize the office, and establish such bureaus as may be required or appropriate;
- c. Except as otherwise provided in subsections l. and t., below, appoint, pursuant to the provisions of Title 11A of the New Jersey Statutes, such clerical assistants and other personnel as may be required for the conduct of the office;
- d. Assign and reassign personnel to employment within the office;
- e. Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the conduct of contested cases and the rendering of administrative adjudications;

f. Promulgate and enforce such rules for the prompt implementation and coordinated administration of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as may be required or appropriate;

g. Administer and supervise the procedures relating to the conduct of contested cases and the making of administrative adjudications, as defined by section 2 of P.L.1968, c.410 (C.52:14B-2);

h. Advise agencies concerning their obligations under the Administrative Procedure Act, subject to the provisions of subsections b. and e. of section 4 of P.L.1944, c.20 (C.52:17A-4);

i. Assist agencies in the preparation, consideration, publication and interpretation of administrative rules required or appropriate pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.);

j. Employ the services of the several agencies and of the employees thereof in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency;

k. Have access to information concerning the several agencies to assure that they properly promulgate all rules required by law;

l. Assign permanent administrative law judges at supervisory and other levels who are qualified in the field of administrative law or in subject matter relating to the hearing functions of a State agency.

Administrative law judges shall receive such salaries as provided by section 4 of P.L.1978, c.67 (C.52:14F-4), as amended by P.L.1999, c.380, shall not engage in the practice of law and shall devote full time to their judicial duties.

Administrative law judges appointed after the effective date of this amendatory act shall have been attorneys-at-law of this State for a minimum of five years. An administrative law judge appointed prior to the effective date of this amendatory act shall not be required to be an attorney or, if an attorney, shall not be required to have been an attorney-at-law for five years in order to be reappointed;

m. Appoint additional administrative law judges, qualified in the field of administrative law or in a subject matter relating to the hearing functions of a State agency, on a temporary or case basis as may be necessary during emergency or unusual situations for the proper performance of the duties of the office, pursuant to a reasonable fee schedule established in advance by the director. Administrative law judges appointed pursuant to this procedure shall have the same qualifications for appointment as permanent administrative law judges;

n. Assign administrative law judges to conduct contested cases as required by sections 9 and 10 of P.L.1968, c.410 (C.52:14B-9 and 52:14B-10). Proceedings shall be scheduled for

suitable locations, either at the offices of the Office of Administrative Law or elsewhere in the State, taking into consideration the convenience of the witnesses and parties, as well as the nature of the cases and proceedings;

o. Assign an administrative law judge or other personnel, if so requested by the head of an agency and if the director deems appropriate, to any agency to conduct or assist in administrative duties and proceedings other than those related to contested cases or administrative adjudications, including but not limited to rule-making and investigative hearings;

p. Assign an administrative law judge not engaged in the conduct of contested cases to perform other duties vested in or required of the office;

q. Secure, compile and maintain all reports of administrative law judges issued pursuant to this act, and such reference materials and supporting information as may be appropriate;

r. Develop and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this act;

s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of reappointments under section 4 of P.L.1978, c.67 (C.52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities; settlement skills; quantity, nature and quality of caseload disposition; impartiality and conscientiousness. The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the findings and the proposed action with the affected judge. The evaluation by the director and supporting data shall be submitted to the Governor at least 90 days before the expiration of any term. These documents shall remain confidential and shall be exempted from the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.);

t. Promulgate and enforce rules for reasonable sanctions, including assessments of costs and attorneys' fees which may be imposed on a party, and attorney or other representative of a party who, without just excuse, fails to comply with any procedural order or with any standard or rule applying to a contested case and including the imposition of a fine not to exceed \$1,000.00 for misconduct which obstructs or tends to obstruct the conduct of contested cases; and

u. Have power in connection with contested case hearings (1) to administer oaths to any and all persons, (2) to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers, and documents of any person or persons, (3) to entertain

objections to subpoenas, and (4) to rule upon objections to subpoenas except, that any orders of administrative law judges regarding these objections may be reviewed by the agency head before the completion of the contested case in accordance with procedural rules, adopted by the Director and Chief Administrative Law Judge of the Office of Administrative Law. Misconduct by any party, attorney or representative of a party or witness which obstructs or tends to obstruct the conduct of a contested case or the failure of any witness, when duly subpoenaed to attend, give testimony or produce any record, or the failure to pay any sanction assessed pursuant to subsection t. of this section, shall be punishable by the Superior Court in the same manner as such failure is punishable by such court in a case pending therein.

**52:14F-6. Assignment of administrative law judges or person not employee of office by special appointment; powers of administrative law judges**

- a. Administrative law judges shall be assigned by the director from the office to an agency to preside over contested cases in accordance with the special expertise of the administrative law judge.
- b. A person who is not an employee of the office may be specially appointed and assigned by the director to preside over a specific contested case, if the director certifies in writing the reasons why the character of the case requires utilization of a different procedure for assigning administrative law judges than is established by this amendatory and supplementary act.
- c. Each administrative law judge shall have and exercise the powers conferred upon the director to the extent that the director shall delegate them by rule.

**52:14F-7. Continuation of authority of agency under § 52:14B-10; inapplicability of act to contested case initiated prior to effective date**

- a. Nothing in this amendatory and supplementary act shall be construed to deprive the head of any agency of the authority pursuant to section 10 of P.L.1968, c.410 (C.52:14B-10) to determine whether a case is contested or to adopt, reject or modify the findings of fact and conclusions of law of any administrative law judge consistent with the standards for the scope of review to be applied by the head of the agency as set forth in that section and applicable case law.
- b. Nothing in this amendatory and supplementary act shall be construed to affect the conduct of any contested case initiated prior to the effective date of this act, or the making of any administrative adjudication in such contested case.

**52:14F-8 Contested cases to which administrative law judge not assignable; exception upon specific request**

Unless a specific request is made by the agency, no administrative law judge shall be assigned by the director to hear contested cases with respect to:

- a. The State Board of Parole; the Public Employment Relations Commission; the Division of Workers' Compensation; the Division of Tax Appeals; or the management or operation by any agency of a State custodial, penal or correctional institution or program, insofar as the acts of the agency relate to the internal affairs of the institution or program unless the sanctions arising from

a single incident involve the loss of 365 days or more of time credits awarded pursuant to R.S. 30:4-140.

b. Any matter where the head of the agency, a commissioner or several commissioners are required to conduct or determine to conduct the hearing directly and individually.

**52:14F-9. Applicability of State Agency Transfer Act**

This act shall be subject to the provisions of the State Agency Transfer Act, P.L.1971, c. 375 (C. 52:14D-1 et seq.).

**52:14F-10. Repeal of inconsistent acts and parts of act**

All acts and parts of acts inconsistent with any of the provisions of this amendatory and supplementary act are, to the extent of such inconsistency, superseded and repealed.

**52:14F-11. Severability**

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are declared to be severable.

**52:14F-12. Environmental unit established; administrative law judges; adjudication of contested cases**

a. The Director of the Office of Administrative Law shall, within 12 months after the effective date of this act, establish within the Office of Administrative Law an environmental unit consisting of administrative law judges having special expertise in environmental law. The number of administrative law judges in the environmental unit shall be proportional to the number and complexity of environmental cases referred to the office.

b. Upon the establishment of the environmental unit, all contested cases, as defined in section 2 of P.L.1968, c.410 (C.52:14B-2), concerning environmental law referred to the Office of Administrative Law shall be assigned to and adjudicated by the administrative law judges in the environmental unit.

**52:14F-13. Annual notification of legislative committees**

The director shall, within 12 months after enactment, and annually thereafter, notify the Assembly Energy and Environment Committee and the Senate Environmental Quality Committee or their successors, of the number of cases pending in the Office of Administrative Law, the total number of Administrative Law Judges serving in the office, the number of Administrative Law Judges serving in the environmental unit and the number of environmental cases assigned to the environmental unit.

**NEW JERSEY ADMINISTRATIVE CODE  
TITLE 1. OFFICE OF ADMINISTRATIVE LAW**

**CHAPTER 30  
RULES FOR AGENCY RULEMAKING**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**1:30-1.1 Short title**

The provisions of this chapter shall be known as "The rules for agency rulemaking".

**1:30-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Administrative correction or change" means a correction or change to the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30- 2.7).

"Adopt" means the action whereby a rule is officially approved and authorized for promulgation by an adopting agency.

"Adopting agency" means that agency authorized by law to conduct a rulemaking proceeding.

"Agency" or "State agency" is defined in N.J.S.A. 52:14B-2(a).

"Adopting agency head" means either that person designated by statute as authorized to promulgate rules, or the principal executive officer or an authorized adopting agency.

"Amend" means to modify, alter, revise or suspend the operative effect of a previously promulgated rule.

"Appendix" means any collateral material which serves to clarify, illustrate, or explain a rule.

"Code" means the New Jersey Administrative Code, published pursuant to N.J.S.A. 52:14B-7(a).

"Codify" means to devise, pursuant to N.J.S.A. 52:14B-7(f), the form in which rules are published to achieve a logical and consistent arrangement of the provisions.



"Director" means the Director of the Office of Administrative Law.

"Division of Administrative Rules" means that Division of the Office of Administrative Law to which documents shall be submitted for publication in the New Jersey Register; which reviews such documents for compliance with this chapter and the Act; which maintains permanent records concerning rule promulgation; and which provides assistance to agencies concerning the preparation, consideration, publication and interpretation of rules.

"Document" means any writing submitted to the Office of Administrative Law by an agency for the purpose of filing, publishing, or other processing pursuant to law. The singular of this term refers to the entirety of each writing although such writing establishes or affects more than one rule or subject matter, or consists of more than one page or part.

"Effective" means that a rule, pursuant to the Constitution, the Act and this chapter, has been duly adopted, filed with the Office of Administrative Law, and in the case of a new rule, amendment, or repeal, promulgated in the New Jersey Register. A readoption is effective upon timely filing with the OAL.

"Emergency adoption" means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30- 6.5).

"Executive Order No. 27(1994)" means the 27th executive order issued by Governor Whitman in 1994. Commonly referred to as the "Federal standards" provision, the executive order requires a statement or analysis as to whether a rule exceeds standards or requirements imposed by Federal law. Federal law includes statutes, rules, regulations, orders, directives or guidelines.

"Exempt agency" means any agency excluded from the requirements of the Administrative Procedure Act because it does not meet the definition of "agency" in N.J.S.A. 52:14B-2(a).

"Exempt rule" means any rule of an exempt agency or a rule of a non-exempt agency which, pursuant to N.J.S.A. 52:14B-5.1e, does not require an expiration date.

"File" means the action whereby a copy of a document is received by the Division of Administrative Rules; stamped with the date and time of receipt; entered into the registry; and thereafter accepted for publication by the Director. All documents accepted for publication shall be considered filed as of the date of receipt.

"Intra-agency statement" means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.

"Inter-agency statement" means a communication between separate agencies that does not substantially impact upon the rights or legitimate interests of the regulated public.

"Joint proposal and joint adoption" is the process by which two or more agencies, with

concurrent or complementary jurisdiction, jointly propose and adopt identical rules, at the same time. The process may be mandated by legislation or voluntarily initiated, where appropriate.

"Negotiating a rule" means the process whereby an agency requests, and the OAL provides a representative to conduct a preliminary, non-adversarial proceeding with respect to a contemplated rulemaking proceeding, and which results in a rule presented to the "adopting agency" head in the form required by N.J.A.C. 1:30-5.1.

"Notice of petition for rulemaking" means that document described in N.J.A.C. 1:30-4.1 which must be submitted to the Office of Administrative Law for publication in the Register when a request for agency rulemaking action is made by an interested person, pursuant to N.J.S.A. 52:14B-4(f).

"Notice of pre-proposal" means that document described in N.J.A.C. 1:30-5.3 which must be submitted to the Office of Administrative Law for publication in the New Jersey Register, when an agency determines to conduct, pursuant to N.J.S.A. 52:14B-4(e), a preliminary proceeding with respect to a contemplated rulemaking proceeding or when, pursuant to N.J.A.C. 1:30-5.3, a pre-proposal shall be submitted.

"Notice of proposal" means that document described in N.J.A.C. 1:30-5.1 which must be submitted to the Office of Administrative Law for filing and then published in the New Jersey Register and distributed to the Legislature and interested persons.

"Operative" means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule. Unless otherwise specified in the rule, a rule becomes operative when effective.

"Organizational rule" means a rule promulgated pursuant to N.J.S.A. 52:14B- 3(l), including a description of the structure of the agency; the persons from whom and places from which information, applications and other forms may be obtained; and the persons to whom and places to which applications, requests and other submissions may be made.

"Person" means any natural individual, association, board, venture, partnership, corporation, organization, institution and governmental instrumentality recognized by law for any purpose whatsoever.

"Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-5.3(b). This preliminary proceeding precedes the filing of a formal rule proposal.

"Promulgate" means to proclaim officially in the Register and thereby render effective a new rule, amendment or repeal which was duly adopted by an agency and filed with the Office of Administrative Law.

"Propose" means the action whereby an adopting agency submits a notice of proposed rule to the Office of Administrative Law for filing and publication by the Director.

"Public hearing" means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking which affords the public an opportunity to present to the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

"Readopt" means to conduct a rulemaking proceeding for the purpose of continuing in effect an emergency rule which would otherwise expire pursuant to N.J.S.A. 52:14B-4(c) (see N.J.A.C. 1:30-6.5), or a rule which expires pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4). In a rulemaking proceeding to readopt a rule, the rule continues in effect upon the timely filing of the notice of adoption with the Office of Administrative Law.

"Register" means the "New Jersey Register" published pursuant to N.J.S.A. 52:14B-7(b).

"Registry" means the serial list of documents submitted for filing with the Director.

"Repeal" means to conduct a rulemaking proceeding to declare void a rule, the effect of which is to terminate the legal effect of such rule prospectively only. Any rule so terminated shall continue thereafter to be enforced in and applied to all proceedings, formal or otherwise, initiated pursuant to rule or to law prior to the effective date of such repeal.

"Rule" or "administrative rule" is defined in N.J.S.A. 52:14B-2(e). For purposes of determining effective dates, there are five types of rules: new rules, amendments, repeals, readoptions, and emergency rules.

"Rule activity" means any agency action with respect to a rule authorized or required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and including a petition for a rule, a pre-proposal for a rule, and rulemaking proceeding.

"Rulemaking proceeding" means those steps which shall be followed pursuant to the Act and this chapter, for a rule to be validly promulgated, and which include the procedures for proposal of a rule, N.J.A.C. 1:30-5, the proper adoption of a rule, and the procedures upon adoption of a rule, N.J.A.C. 1:30-6.

### **1:30-1.3 Offices**

(a) The Division of Administrative Rules, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, PO Box 049, Quakerbridge Road, Trenton, New Jersey 08625-0049.

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

(c) Information may be obtained by telephoning the following for:

1. Rulemaking information (609) 588-6614;
2. Document filings (609) 588-6613 or 6606; and
3. Administrative Code research (609) 588-6613 or 6606.

#### **1:30-1.4 Citations to the Code**

(a) The New Jersey Administrative Code shall be cited as "N.J.A.C."

(b) The citation of a particular section of the New Jersey Administrative Code shall include the numerical designations of the title, chapter, subchapter and section referred to, preceded by the initials N.J.A.C. As an example, this section would be cited as N.J.A.C. 1:30-1.4.

#### **1:30-1.5 Citations to the Register**

(a) The New Jersey Register shall be cited as "N.J.R."

(b) The citation to material appearing in the New Jersey Register shall include the volume number, page number and item letter, the volume and page numbers being separated by the initials, "N.J.R." As an example, the second item of page 20 of the January 3, 1995 issue would be cited as 27 N.J.R. 20(b).

#### **1:30-1.6 Statutory citations in the Code**

Statutory citations will be "N.J.S.A.", the New Jersey Statutes Annotated. This is for the convenience of the public, but the official copy of any statute will be found in the State's unpublished compilation of statutes or in the published yearly pamphlet laws.

#### **1:30-1.7 Use of headings**

Title, subtitle, chapter, subchapter, section, article, group, part and division headings contained in the Register or Code are not part of the rule, but are intrinsic parts of the publication. As such, these headings may be used in interpreting the rule.

#### **1:30-1.8 Access to documents**

(a) Every document or a copy thereof submitted to the Office of Administrative Law for filing shall be maintained on record by the Division of Administrative Rules.

(b) Any person shall, upon request, be afforded an opportunity to examine any document maintained by the Division of Administrative Rules during business hours 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

### **1:30-1.9 Copies of documents; fees**

(a) Any person may obtain copies of filed documents from the Division of Administrative Rules pursuant to the provisions of N.J.S.A. 47:1A-2 upon payment of a fee as follows:

1. First page to 10th page: \$.75 per page;
2. Eleventh page to 20th page: \$.50 per page;
3. All pages over 20: \$.25 per page.

(b) Original filed documents shall not be released from the custody of the Office of Administrative Law.

### **1:30-1.10 Forms**

From time to time the Office of Administrative Law may adopt as interagency statements the forms and formats which shall be used in rule activities.

### **1:30-1.11 (Reserved)**

### **1:30-1.12 Compliance**

(a) Upon an initial determination by the OAL that any proposed or adopted rule, pre-proposal for a rule or any notice is not in compliance with the technical or procedural requirements concerning rulemaking, the OAL may temporarily suspend the processing of that document. In such situations, the OAL shall contact the agency to indicate the basis for the initial determination of non-compliance. The OAL and the agency shall mutually review the initial determination. The OAL shall assist the agency in a cooperative effort to obtain compliance.

(b) Upon a determination by the Director that a proposed or adopted rule, a pre-proposal for a rule, or a notice does not satisfactorily comply with these rules for agency rulemaking, the OAL shall not process for publication the proposed or adopted rule, pre-proposal for a rule or any notice.

(c) If the OAL determines that there is an issue of non-compliance which concerns statutory authority, related legal issues, or contested case jurisdiction, it may refer the matter to the Office of the Attorney General for advice.

### **1:30-1.13 Invalidation of rule**

In the event that a proposed or adopted rule is suspended or otherwise rendered inoperative or ineffective by Court rule or ruling, by legislative action or by Executive Order, the Office of Administrative Law shall, upon receipt of notice of the event, prepare and publish a notice in the Register and the Code, as appropriate.

### **1:30-1.14 Publication filing deadlines**

(a) Pursuant to N.J.S.A. 52:14B-7(c), the Director will issue annually a schedule for the filing of documents for publication in the New Jersey Register. The schedule will set forth, for each Register to be published in the following year, the issue publication date, the deadline dates for the filing of proposal and adoption notices, and the minimum 30-day comment deadline for proposals. Notices of proposal and pre-proposal, of proposal comment period extensions and of proposal public hearings shall be filed on or before the proposal filing deadline. Other notices shall be filed on or before the adoption deadline.

(b) The filing deadline for the inclusion of a document in a particular issue of the Register is on or before 12:00 P.M. (noon) on the proposal or adoption date, as appropriate, specified in the publication schedule. Documents filed after the deadline will be included in the filed-for Register issue at the discretion of OAL. OAL's decision to include a late-filed document will be based upon the length and anticipated complexity of the document, the volume and anticipated complexity of documents timely filed, and availability of staff. Once a determination is made as to the Register issue in which a late- filed document will be published, OAL shall so advise the agency.

### **1:30-1.15 Filing of a document**

(a) Upon receipt of a document for filing, there shall be stamped on its face the following:

1. The hour and date of receipt; and

2. The word "received".

(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.

(c) All proposals shall be assigned a proposed rule number (PRN) by the Division of Administrative Rules. All adoptions shall be assigned a rule document number (R.d.) by the Division of Administrative Rules.

## **SUBCHAPTER 2. RULEMAKING GENERALLY**

### **1:30-2.1 Clarity of rules**

(a) In order to be accepted for filing, a document shall be written in a reasonably simple and understandable manner which is easily readable.

1. The document shall be drafted to provide adequate notice to:

i. Affected persons; and

ii. Interested persons with some subject matter expertise.

2. The document shall conform to commonly accepted principles of grammar.

3. The document shall contain sentences that are as short as practical, and be organized in a sensible manner.

4. The document shall not contain double negatives, confusing cross references, convoluted phrasing or unreasonably complex language.

5. Terms of art and words with multiple meanings that may be misinterpreted shall be defined.

6. The document shall be sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes and expected consequences of the adoption, readoption or amendment of the rule or regulation.

(b) Any rule activity or notice which does not comply with the standard of clarity set forth in (a) above shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) The provisions of (a) above shall not apply to any administrative rule that a State agency adopts to conform to a model code, Federal rule, interstate agreement or other similar regulatory measure not written by the State agency but incorporated into an administrative rule. The State

agency shall include in the Summary of the notice of proposal for such rule a description of the rule which complies with (a) above. For a regulatory measure incorporated by reference, as amended and supplemented, into a rule, in accordance with N.J.A.C. 1:30-2.2(c)1ii, the requirement for a notice of proposal Summary description in compliance with (a) above shall apply only to the notice of proposal in which the initial incorporation by reference was proposed.

(d) The Governor may, upon written request of a State agency, waive the requirements of this section with respect to the readoption, without amendment, of any rule or provision of a rule.

### **1:30-2.2 Incorporation by reference**

(a) Specifically designated sections of the following sources may be incorporated into a rule by reference:

1. New Jersey Statutes Annotated;
2. United States Code;
3. New Jersey Session Laws;
4. Code of Federal Regulations;
5. Federal Register;
6. Any uniform system of accounts published by the National Association of Regulatory Utility Commissioners;
7. Any generally available standard published by any of the standardizing organizations listed in the National Bureau of Standards Special Publication 417, Director of United States Standardization Activities or supplements thereto or reissues thereof; or
8. Any other generally available publication approved by the Director.

(b) Any section of a source incorporated by reference shall be made available for public inspection by the adopting agency and shall be available in printed form from the adopting agency or the original source for a reasonable fee.

(c) Any agency incorporating any section of a source by reference shall adopt and file as a rule appropriate language indicating:

1. What is incorporated including either:
  - i. The specific date or issue of the section of the source incorporated; or



ii. A statement indicating whether the section incorporated includes future supplements and amendments.

2. Where and how a copy of the section may be obtained.

(d) Where a State agency rule elaborates on, or summarizes or paraphrases a State or Federal statute or Federal regulation, the rule shall contain a citation of or reference to that statute or regulation.

### **1:30-2.3 Single subject for each section**

Each proposed or adopted section shall embrace but one subject, and that shall be expressed in the section heading.

### **1:30-2.4 Authorization for rule activity**

(a) A notice of adoption shall be signed by the adopting agency head, or any other person authorized by statute.

(b) A notice of proposed rule or any other rule activity shall be signed either by:

1. The adopting agency head; or

2. By an agency employee who has been duly authorized by the agency head to propose rules, and for whom a written authorization signed by the agency head has been submitted to the Office of Administrative Law.

(c) Any rule activity not properly authorized shall be returned to the agency.

### **1:30-2.5 Effect of statement for proposed rule**

The statements for a proposed rule (N.J.A.C. 1:30-5.1(c)) and for any change upon adoption of a rule (N.J.A.C. 1:30-6.1(b)12 through 15) are not part of the rule, but are intrinsic parts of the proposal and adoption as published in the Register. As such, these statements may be used in interpreting the rule.

### **1:30-2.6 Official copy of proposed, adopted and promulgated rule**

- (a) The Register constitutes the authoritative text of any notice printed therein.
- (b) The full text printed in the Register of any proposed rule, adopted rule or any change made upon adoption of a proposed rule, constitutes the authoritative text of that proposed rule, adopted rule or change. An official copy of the text printed in the Register shall be kept on file by the OAL.
- (c) Where the full text of an adopted rule is not printed in the Register, the full text of the proposed rule printed in the Register, plus the full text of any change printed in the Register upon adoption, constitutes the authoritative text of the adopted and promulgated rule. An official copy of the text printed in the Register shall be kept on file by the OAL.
- (d) Where the full text of any proposed rule, adopted rule, or change is not printed in the Register, the authoritative text is the copy submitted by the adopting agency and kept on file by the Office of Administrative Law.

### **1:30-2.7 Administrative corrections and changes**

- (a) Upon being advised in writing by an agency or upon its own initiative, with notice to the appropriate agency, the OAL may make an administrative correction or change to any rule published in the New Jersey Register or New Jersey Administrative Code. An administrative correction or change shall be effective upon filing with the OAL.
- (b) An administrative correction may be made to correct an error which is obvious, easily recognizable, or apparent to the promulgating agency and the regulated public. An administrative correction may be made to conform a proposed or adopted rule to the intent of the agency as expressed in the proposal or adoption statements. Administrative corrections may be made to correct any part of a rule including, but not limited to, its text, spelling, grammar, punctuation, codification, and cross-references.
- (c) An administrative change may be made to recodify a rule. Administrative changes may also be made to amend a rule to provide the public with notice of nonregulatory changes that have occurred since the rule was adopted. Administrative changes may include, but are not limited to, changes in:
  - 1. Names of departments, agencies, divisions and bureaus;
  - 2. Titles of specific individuals; and
  - 3. Addresses, phone numbers and business hours.

(d) An administrative correction or change shall not be used to adjust the text of a rule to subsequent changes in circumstance or policy decisions.

(e) Notice of administrative correction or change shall be published in the New Jersey Register. The administrative correction or change with appropriate annotation shall be included in a subsequent supplement to the New Jersey Administrative Code.

## **1:30-2.8 Appendices**

(a) Appendices shall include only material which clarifies, illustrates or explains a rule. An appendix may include, but is not limited to, the following:

1. Technical requirements or specifications;
2. Instructions;
3. Formulae;
4. Forms;
5. Examples of hypothetical cases;
6. Reprints of regulations, statutes, forms, etc., which originate elsewhere;
7. Lists of offices, their addresses and hours of business; and
8. Analyses or explanatory material regarding a rule, which may contain a rationale or derivation of the rule.

(b) Any material, such as but not limited to, that in (a)1 through 8 above which is non-regulatory may be included in an appendix and cross-referenced in the text of a rule.

(c) Any material, such as, but not limited to, that listed in (a)1 through 8 above which is regulatory may be included in an appendix as long as the appendix is incorporated by reference in the text of a rule. Any amendment to the appendix shall therefore be through rulemaking.

(d) The Office of Administrative Law shall, pursuant to N.J.S.A. 52:14F-5 and N.J.S.A. 52:14B-7(c) and (f), determine:

1. Whether any regulatory provisions found in an Appendix shall be integrated and/or codified into the text of a rule; and
2. The location of an Appendix to a rule in the New Jersey Register and the New Jersey Administrative Code; and

3. Whether an Appendix should be published in the New Jersey Register and the New Jersey Administrative Code.

(e) This section shall be applied prospectively; however, if existing appendices or rules to which they refer are subsequently amended after August 15, 1988, those appendices and rules shall then be conformed to comply with this section.

### **1:30-2.9 Organizational rule; rules of practice**

(a) Each agency shall:

1. Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests; and

2. Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency, and, if not otherwise set forth in an agency's rules, a table of all permits and their fees, violations and penalties, deadlines, processing times and appeals procedures.

i. As used in this paragraph, "permit" means any agency license, permit, certificate, approval, charter, registration or other form of permission required by law.

## **SUBCHAPTER 3. RULEMAKING CALENDARS**

### **1:30-3.1 Publication of rulemaking calendars**

(a) Each agency shall publish in the New Jersey Register a quarterly calendar setting forth a schedule of the agency's anticipated rulemaking notice of proposal activities for the next six months. The calendars shall be published in the first New Jersey Register for the months of January, April, July and October and shall be filed with OAL in accordance with the OAL publication schedule (see N.J.A.C. 1:30-1.14) on or before the filing deadline for notices of proposal.

(b) The calendar shall include:

1. The name of the agency;

2. The name of the agency head;

3. Specific citation to the rules to be affected;
4. Citation to the legal authority authorizing the rulemaking action;
5. A synopsis of the rulemaking and its objective or purpose; and
6. The month and year in which publication of the notice of proposal in the New Jersey Register is anticipated.

### **1:30-3.2 Calendar amendment**

(a) An agency shall notify the Director of the Office of Administrative Law when it wishes to amend its calendar of rulemaking activities. Such notice shall be in the form of a revised version of the rulemaking calendar published most recently prior to the amendment, and shall highlight the amendment, both in an explanatory statement and the appearance of the amendment text (additions in boldface, deletions in brackets) within the calendar. Notices of calendar amendment shall be filed with the OAL in accordance with the deadlines for filing notices of proposal set forth in the OAL publication schedule. An agency shall take no action on an amended rulemaking activity until at least 45 days following the first publication of the amended calendar in which the announcement of that amended rulemaking activity appears, if an amendment:

1. Involves the addition of any rulemaking activity to an agency's calendar;
2. Changes the anticipated month of proposal publication to an earlier month; or
3. Alters the objective, purpose or subject matter synopsis of the rulemaking so as to change who or what shall be affected by the rulemaking and/or how they shall be affected.

(b) If a calendar amendment under (a)1 through 3 above appears initially in an agency's quarterly rulemaking calendar, an agency shall take no action on that amended rulemaking activity until at least 45 days following the publication of the quarterly calendar.

### **1:30-3.3 Exceptions**

- (a) The provisions of N.J.A.C. 1:30-3.1 and 3.2 shall not apply to rulemaking:
1. Required or authorized by Federal law, when failure to adopt rules in a timely manner will prejudice the State;
  2. Subject to a specific statutory authorization requiring promulgation in a lesser time period than addition to a calendar would permit;

3. Involving an imminent peril subject to provisions of N.J.S.A. 52:14B- 4(c);
4. For which the agency has published a notice of pre-proposal of the rule in accordance with N.J.A.C. 1:30-5.3(b) and (c); or
5. For which a comment period of at least 60 days is provided.

(b) A proposed rule falling within any of the exceptions in (a) above shall so indicate in the Summary of notice of proposal. If the rule falls under the exception in (a)1 above, the Summary shall include the specific citation of the Federal law requiring or authorizing the rule, and an explanation as to how failure to adopt the rule in a timely manner will prejudice the State.

### **1:30-3.3A (Reserved)**

### **1:30-3.4 Calendar copies**

(a) Each agency shall include, in that portion of its Internet web site concerned with rulemaking, either its rulemaking calendar or a notice of the availability of its rulemaking calendar for the fee established at (c) below. If an agency's web site does not feature a portion devoted to rulemaking, the calendar or notice of the availability of the rulemaking calendar shall be included in that portion of the web site otherwise used for public notices and/or information.

(b) In addition to the notice under (a) above, an agency shall provide notice of the availability of its rulemaking calendar for the fee established under (c) below in the same manner as it publicizes its proposed rulemakings under N.J.A.C. 1:30-5.2(a)6.

(c) Agencies shall charge a fee for copies of their rulemaking calendars in accordance with the copying fee schedule at N.J.A.C. 1:30-1.9(a).

### **1:30-3.5 through 3.7 (Reserved)**

## **SUBCHAPTER 4. PETITION FOR RULEMAKING**

### **1:30-4.1 Notice of petition for rulemaking**

(a) An interested person may petition an agency to adopt a new rule or amend or repeal an existing rule.

(b) Each agency shall adopt a rule prescribing the form and procedures for the submission,

consideration and disposition of the petition. The petition shall state clearly and concisely: the substance or nature of the rulemaking which is requested; the reasons for the request and the petitioner's interest in the request; and references to the authority of the agency to take the requested action. The petitioner may provide the text of the proposed new rule, amended rule or repealed rule.

(c) When a person petitions an agency to begin a rulemaking proceeding, the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt. The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

#### **1:30-4.2 Agency response to petition**

(a) Within 60 days of receipt of a rulemaking petition, the agency shall either:

1. Deny the petition, in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;
2. Grant the petition and initiate a rulemaking proceeding within 90 days of the granting of the petition; or
3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of such referral. Upon conclusion of such further deliberations, the agency shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The agency shall mail the results of these further deliberations to the petitioner and submit the results to the OAL for publication in the Register.

(b) Within 60 days of receiving the petition, the agency shall mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The Register citation for the notice of petition;
3. The signature of the agency head, signifying that the petition was duly considered pursuant to

law;

4. The nature or substance of the agency action upon the petition; and

5. A brief statement of reasons for the agency action.

### **1:30-4.3 Failure to respond to petition**

(a) If an agency fails to act in accordance with the time frames set forth in N.J.A.C. 1:30-4.2(a), the petitioner may request, in writing, a public hearing on the petition by submitting a request to the Director of the Office of Administrative Law.

(b) Upon receipt of a request for a hearing, the Director shall order a public hearing on the rulemaking petition. The Director shall provide the agency with a notice of the Director's intent to hold the public hearing if the agency does not.

(c) If the agency does not provide notice of a public hearing within 15 days of issuance of the Director's notice, the Director shall schedule a public hearing to be conducted by the Office of Administrative Law. Notice of that hearing shall be provided to the petitioner and the public at least 15 days prior to the hearing.

(d) If the public hearing is held by the Office of Administrative Law, it shall be conducted by an administrative law judge, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to N.J.S.A. 52:14F-5, or an independent contractor assigned by the Director.

(e) The petitioner and the agency shall participate in the public hearing and shall present a summary of their positions on the petition and a summary of the factual information on which their positions on the petition are based and shall respond to questions posed by any interested party. The hearing procedure shall otherwise be consistent with the requirements for the conduct of a public hearing as prescribed in N.J.A.C. 1:30-5.5(d), except that the person assigned to conduct the hearing shall make a report summarizing the factual record presented and the arguments for and against proceeding with a rule proposal based upon the petition.

(f) The report shall be filed with the agency and delivered or mailed to the petitioner. A copy of the report shall be filed with the Legislature along with the petition for rulemaking.

### **1:30-4.4 through 4.7 (Reserved)**



## **SUBCHAPTER 5. PROPOSAL PROCEDURE**

### **1:30-5.1 Notice of proposed rule**

(a) Where the law requires that an agency give notice of its rulemaking proceedings, the agency shall prepare a "notice of proposal" and submit the notice to the OAL. The notice of proposal shall comply with the requirements of this section.

(b) The notice of proposal shall include a heading, that shall include, in the following order:

1. The heading of the Administrative Code Title affected (for example, the heading of Title 19 is "Other Agencies");

2. The element within the proposing agency (for example, the Division or Bureau) originating the notice;

3. A caption describing the subject matter of what is proposed;

4. A suggested N.J.A.C. citation for any proposed new rule and the existing citation for any rule(s) proposed for amendment, repeal or readoption;

5. After "Authorized By:", the name of the adopting agency head and agency and the signature of the adopting agency head or other authorized signatory as provided in N.J.A.C. 1:30-2.4;

6. After "Authority:", a citation to the specific N.J.S.A. statutory authority for the proposal or the Public Law number if an N.J.S.A. citation is unavailable. An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect shall be made in the Summary;

7. After "Calendar Reference:", the New Jersey Register publication date and citation of the rulemaking calendar most recently prior to the anticipated publication date of the notice of proposal.

i. If the rulemaking is excepted from the prior calendar listing requirement under N.J.A.C. 1:30-3.3(a), this heading item shall reference the notice Summary. The Summary shall contain the explanation of the exception required under N.J.A.C. 1:30-3.3(b). For example, the heading item may read, "Calendar Reference: See Summary below for explanation of exception to calendar requirement.";

8. An item headed "Proposal Number:" which shall be completed by OAL; and

9. An announcement of the public's opportunity to be heard regarding the proposal, which shall include:

- i. When, where, and how persons may present their views orally or in writing;
- ii. When and where persons may attend any formal rule adoption proceeding;
- iii. The name, address and telephone number of the person(s) to receive written or oral comments; and
- iv. If the agency chooses to accept comments electronically, a facsimile telephone number (FAX number) and/or e-mail address.

(c) The notice of proposed rule shall include a brief statement of the proposed rulemaking, which shall include, in the following order:

1. A summary statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect. The summary shall describe, detail and identify:

- i. Who and what will be affected by the proposal;
- ii. How, when and where the effect will occur;
- iii. What the proposal prescribes, proscribes or otherwise mandates;
- iv. What enforcement mechanisms and sanctions may be involved; and
- v. Any other relevant or pertinent information;

2. A social impact statement which describes the expected social impact of the proposed rulemaking on the public, particularly on any segments of the public proposed to be regulated, and including any proposed or expected differential impact on different segments of the public, including the rulemaking action, and justification therefore;

3. An economic impact statement which describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated;

4. A Federal standards statement or analysis which addresses whether the rules in the notice of proposal contain standards or requirements that exceed standards or requirements imposed by Federal law. The analysis shall apply to any new, readopted or amended rule under the authority of or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

i. Rules which are not subject to any Federal standards or requirements shall be accompanied by a statement to that effect and that a Federal Standards Analysis is not applicable to the rulemaking.

ii. Rules which contain standards or requirements that do not exceed or are the same as Federal standards or requirements shall be accompanied by a statement which cites the Federal standards or requirements and states that the standards or requirements of the rule do not exceed or are the same as those imposed by Federal law.

iii. Rules which exceed standards or requirements imposed by Federal law, notwithstanding the Federal government's determination that lesser standards or requirements are appropriate, shall be accompanied by an analysis which contains the following:

(1) A discussion of the agency's policy reasons for imposing standards or requirements which exceed those required by Federal law;

(2) A cost-benefit analysis that supports the agency's decision to impose standards or requirements which exceed those required by Federal law;

(3) A discussion which supports the fact that the agency standard or requirement to be imposed is achievable under current technology; and

(4) A certification by the agency head that the analysis permits the public to understand accurately and plainly the purposes and expected consequences of the new, readopted or amended rule;

5. A jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect;

6. An agriculture industry impact statement setting forth the nature and extent of the impact of the proposed rule on the agriculture industry;

7. A regulatory flexibility statement or analysis:

i. All rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include a regulatory flexibility analysis which describes the methods utilized to minimize any adverse economic impact on small businesses.

ii. "Small business" means any business which is resident in New Jersey, independently owned and operated, not dominant in its field, and which employs fewer than 100 full time employees.

iii. Rules which do not impose reporting, recordkeeping or other compliance requirements on small businesses shall be accompanied by a regulatory flexibility statement which indicates that no such requirements are imposed, and the basis for that finding.

iv. Rules which impose reporting, recordkeeping or other compliance requirements on small businesses shall include in the regulatory flexibility analysis with as much quantification as is practical or reliable, the following:

(1) A description of the types and an estimate of the number of small businesses to which the

rule will apply;

(2) A description of the reporting, recordkeeping and other compliance requirements, and the kinds of professional services likely to be needed to comply with the requirements;

(3) An estimate of the initial capital costs, and an estimate of the annual compliance costs, with an indication of any likely variation on small businesses of differing types and sizes; and

(4) An indication of how the rule is designed to minimize any adverse economic impact on small businesses.

v. To indicate how the rule is designed to minimize any adverse economic impact on small businesses, the following approaches shall be considered in the regulatory flexibility analysis:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to small businesses;

(2) The use of performance rather than design standards; and/or

(3) An exemption from coverage by all or part of the rule, provided that the public health, safety or general welfare is not endangered. A finding of endangerment shall explain the relationship between the regulatory requirement that cannot be exempted and the public health, safety or general welfare.

vi. The regulatory flexibility analysis in (c)7iv and v above shall be required whenever small businesses comprise part of, or the entire, regulated group on which reporting, recordkeeping or other compliance requirements are imposed; and

8. A smart growth impact statement which shall describe the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

(d) The notice of proposal shall include the full text of the proposed new rule, amendment, repeal or readoption, specifically indicating additions and/or deletions of any rule being repealed or recodified.

### **1:30-5.2 Publication and distribution of notice of proposal**

(a) Upon OAL's receipt of a notice of proposal which conforms to the requirements of N.J.A.C. 1:30-5.1:

1. The OAL shall submit, within two business days, the notice, other than a notice of a Federally required rule (see N.J.A.C. 1:30-3.7), to the Senate and the General Assembly;

2. The OAL shall publish the notice of proposal in the next available issue of the New Jersey Register. Pursuant to N.J.S.A. 52:14B-7(c), any notice of proposal which would be cumbersome, or unduly expensive to publish, shall not be printed in full. Instead, such notices shall be summarized in the Register. The proposing agency shall make available the notice of proposal and provide in the published notice the manner in which, and from where, copies may be obtained;

3. The agency shall mail either the notice of proposal, as filed, or a statement of the substance of the proposed action to those persons who have made timely request of the agency for notice of its rulemaking actions;

4. The agency shall distribute either the notice of proposal, as filed, or a statement of the substance of the proposed action to the news media maintaining a press office in the State House Complex;

5. The agency shall make available electronically on its web site, through the largest nonproprietary cooperative public computer network, either the notice of proposal, as filed, or a statement of the substance of the proposed action; and

6. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule. Each agency shall adopt rules prescribing the manner in which it shall provide additional publicity under this paragraph, which rules shall set forth the circumstances under which each additional method shall be employed.

i. The additional method of publicity shall include information on the time, place, and manner in which interested persons may present comments and either of the following:

- (1) The full text of the proposed rule; or
- (2) A statement of the substance of the proposed action; or
- (3) A description of the subject and issues involved.

ii. The additional method of publicity may be by:

- (1) Notice in a newspaper of general circulation;
- (2) Trade, industry, government or professional publications;
- (3) Distribution of a press release to the news media;
- (4) Posting of a notice in an appropriate location(s);
- (5) Mailing to a distribution list; or

(6) Any other manner reasonably calculated to inform those persons most likely to be affected by or interested in the intended action.

(b) Additional notice of the proposal under (a)3 through 6 above shall be provided at least 30 days prior to the close of the public comment period.

(c) Any notice of proposal which does not meet the requirements in N.J.A.C. 1:30-5.1 and this section may be subject to the provisions of N.J.A.C. 1:30- 1.12.

### **1:30-5.3 Informal public input; notice of pre-proposal**

(a) Where, prior to the initiation of a formal rulemaking proceeding, an agency seeks assistance in formulating a rule or wishes comments on a preliminary rule draft, it may solicit public input regarding the rulemaking. An agency may use any reasonable informal procedures and means of notice to solicit participation from the regulated or interested public.

(b) Where, pursuant to N.J.S.A. 52:14B-4(e), an agency determines to conduct a deliberative proceeding with respect to a contemplated rulemaking, the agency shall submit a "notice of pre-proposal" to the OAL for publication in the New Jersey Register at least 30 days prior to submission of any formal notice of proposal on the same subject.

(c) The notice of pre-proposal shall include:

1. The name of the adopting officer and agency;
2. The subject matter, problem and purpose which the agency contemplates addressing; and, when available, draft text of the contemplated rule;
3. A citation of the legal authority authorizing the contemplated action;
4. An announcement of the public's opportunity to be heard regarding the contemplated action, which shall include:
  - i. Where, when and how persons may present their comments orally or in writing (see N.J.A.C. 1:30-3.3 Opportunity to be heard); and
  - ii. When and where persons may attend an informal conference or consultation.
5. The title and nature of any committee, and where appropriate, the names and affiliations of any committee members, appointed to advise the agency with respect to any contemplated rulemaking.

(d) It is recommended that all rulemakings which involve the joint or concurrent promulgation of two or more agencies ("joint proposal and adoption") utilize a pre-proposal.

### **1:30-5.4 Opportunity to be heard**

(a) The agency shall accept written or oral comments, arguments, data and views for at least 30 days following publication in the Register of the notice of pre-proposal or a notice of proposal.

1. If within 30 days of the publication of a notice of proposal sufficient public interest is demonstrated in an extension of the time for submission of comments, the agency shall provide an additional 30-day period for the receipt of comments by interested parties. The agency shall not adopt the proposed rule until after the end of that 30-day extension.

i. "Sufficient public interest" for granting an extension of the comment period pursuant to this paragraph shall be determined by the proposing agency based upon definite standards it has adopted as part of its rules of practice required under N.J.S.A. 52:14B-3(2).

(b) Where an agency permits any other method of public comment on a notice of pre-proposal or a notice of proposal, the agency shall provide timely notice of that opportunity in a manner reasonably calculated to reach the interested public.

(c) When a public hearing on a notice of pre-proposal or a notice of proposal is scheduled for a time after the public comment period, the comment period shall be extended in the public hearing notice until the close of the public hearing proceedings. The hearing officer may recommend to the agency head that the comment period be further extended to foster receipt of comments by persons attending the public hearing.

(d) To provide a full comment period, the agency shall accept all public comments postmarked within the designated comment period set forth in the notice of pre-proposal or notice of proposal, or as thereafter extended.

(e) The agency shall consider fully all written and oral submissions concerning the notice of pre-proposal or notice of proposal.

### **1:30-5.6 Rulemaking record**

(a) The agency shall retain a record of any oral and written comments or other material received in response to a proposal (N.J.A.C. 1:30-5.1) or a public hearing (N.J.A.C. 1:30-5.5) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance and a copy of any notices concerning the rule activity, including:

i. Any notice mailed to interested persons pursuant to N.J.A.C. 1:30- 5.2(a)3;

ii. Any notice distributed to the news media pursuant to N.J.A.C. 1:30- 5.2(a)4;

iii. Any notice made available electronically pursuant to N.J.A.C. 1:30- 5.2(a)5; and

iv. Any additional publicity pursuant to N.J.A.C. 1:30-5.2(a)6.

2. A description of the public comments on the notice of proposal:

i. The names of the persons commenting on the notice of proposal;

ii. The name of any trade, craft or professional organization or association making written or oral submissions;

iii. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposal, and any written answer of the agency;

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given to their merits prior to adoption of the proposed rule. A copy of the signed Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) shall satisfy this requirement;

v. A description of the principal points of controversy revealed during the proceeding; and

vi. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the notice of proposal (see N.J.A.C. 1:30-5.5), including:

i. The date, time and place;

ii. The name and title or position of the presiding person;

iii. The nature of the proceeding; and

iv. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-5.3. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-5.3 result in a formal proposed rulemaking, the agency shall discuss in the proposal Summary such preliminary proceedings and the public's participation therein.

(c) If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.



(d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

### **1:30-5.7 Negotiating a rule**

(a) When an agency desires to negotiate the language of a rule proposal, the agency may voluntarily seek the assistance of the OAL in accordance with the following provisions. The negotiating a rule procedure established herein is separate and apart from any methods an agency may utilize to conduct a pre-proposal proceeding.

(b) An agency wishing to negotiate a proposal shall submit a written request to the Division of Administrative Rules, together with a summary of the subject matter; the problem and purpose which the agency contemplates addressing; a list of the interests affected; and the suggested representatives (negotiating team) of these interests.

(c) Each agency and interest group shall have one representative.

(d) A negotiation team shall be composed of no more than 10 members, including the OAL representative.

(e) The Division of Administrative Rules shall review the request, contact the agency and representative(s) of interests, if needed, and then determine whether the subject matter is feasible to negotiate (that is, appropriate for non-adversarial fact-finding and consensus); the interests involved are clearly defined; representatives of the interests sufficiently diverse, and that each representative is accountable to his or her interest group.

(f) Once the Division of Administrative Rules has determined that negotiations should commence, a notice of rule negotiation shall appear in the New Jersey Register. The notice shall identify the subject matter, interests, participants in the negotiation, and the OAL representative. Any interested party who is not heretofore represented on the negotiation team may file a petition for participation with the OAL representative.

(g) The petition for participation shall be a letter addressed to the OAL representative which outlines the petitioner's interests, and why they are not represented by the current composition of the negotiating team. The petition shall be received by OAL no later than 10 days after the notice of negotiation appears in the Register. The OAL representative will then determine within five business days of receipt of the petition whether to include the petitioner.

(h) The OAL representative shall convene the negotiation team within 20 days of notice of negotiation in the Register. The negotiation shall be completed within 10 days of commencement of same, unless all participants agree to continue.

(i) The OAL representative will provide all participants with a final version of a negotiated rule

in the form required by N.J.A.C. 1:30-5.1 within 10 days of the completion of the negotiations.

(j) The agency shall either propose the rules negotiated or notify the OAL and all representatives that it rejects the negotiation within 30 days or such further period as agreed between the OAL Director and the head of the agency that had requested the negotiation.

(k) If, after 60 days from the commencement of the negotiation, no negotiated rule has been approved, the OAL representative may terminate the negotiation and disband the negotiating team. A notice of this action shall appear in the next available Register.

### **1:30-5.8 Federally required rule**

(a) Pursuant to N.J.S.A. 52:14B-4.4, a Federally required proposed rule is not required to be submitted to the Legislature.

(b) A proposed rule is a Federally required rule if the specific provisions of the proposed rule are prescribed by Federal statute, rule or ruling, so that the agency exercises no discretion as to whether to promulgate the rule and as to what is prescribed by the rule.

(c) Where an agency claims that a proposed rule is Federally required, the agency shall submit as part of the notice of proposal a citation for the Federal statute, rule or ruling involved and an explanation of the Federal requirement.

## **SUBCHAPTER 6. PROCEDURE UPON ADOPTION**

### **1:30-6.1 Notice of adoption**

(a) When (a) an agency adopts a proposed rule, the agency shall prepare a "notice of adoption" and submit the notice to the OAL. The notice of adoption shall comply with the requirements of this section.

(b) The notice of adoption shall contain, in the following order:

1. The heading of the Administrative Code Title affected (for example, the heading of Title 19 is "Other Agencies");
2. The element within the adopting agency (for example, the Division or Bureau) originating the notice;
3. A caption describing the subject matter of what is adopted;

4. The N.J.A.C. citation for any adopted new rule and the existing citation for any rule(s) amended, repealed or readopted;

5. After "Proposed:", the publication date of the notice of proposal and the New Jersey Register citation of that notice;

6. After "Adopted:", the date of adoption and the name, title and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;

7. After "Filed:", the date the notice of adoption is filed with the OAL and whether what is adopted is adopted "without change" from the proposal, or with "changes not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3)";

8. After "Authority:", a citation to the specific N.J.S.A. statutory authority for the adoption or the Public Law number if an N.J.S.A. citation is unavailable. An agency may not cite its general statutory authority unless specific legal authority is unavailable and the agency is relying on its general or residual powers, in which case a statement to that effect must have been made in the proposal Summary;

9. After "Effective Date:", the effective date of the adoption;

10. If applicable, after "Operative Date:", the operative date of the adoption if later than the date of Register publication;

11. After "Expiration Date:", the expiration date(s) of the rule(s) adopted, amended, repealed or readopted established in accordance with N.J.A.C. 1:30-6.4. If the rule(s) affected is exempt from having an expiration date, a statement of that exemption, including its basis, shall be provided;

12. If appropriate, a Summary of Hearing Officer's Recommendations and Agency Responses pursuant to N.J.A.C. 1:30-5.5;

13. A Summary of Public Comments and Agency Responses, that shall include a summary of the comments, arguments, data and views received and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected;

i. Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, this Summary shall include the names of all persons who submitted oral or written comments, arguments, data and views concerning the proposal. If the person is commenting on behalf of an entity, the adopting agency shall list as the commenter either the person and the entity for which the person is commenting, or the entity alone;

14. Summary of Changes Upon Adoption, describing any changes between the rules as proposed and adopted, and the reasons for the changes. Changes upon adoption described and explained in the notice in response to a comment need not be included in this Summary, in which

case this portion of the notice would be a Summary of Agency Initiated Changes;

15. A Federal Standards Statement, or a Federal Standards Analysis and agency head certification, as required by N.J.A.C. 1:30-5.1(c)4.

i. If there are no changes upon adoption, the statement or analysis published as part of the proposal may be included;

ii. If there are changes upon adoption which affect whether or not the rule exceeds Federal standards or requirements or which require reproposal, the changes shall be evaluated and a new statement or analysis prepared pursuant to N.J.A.C. 1:30-5.1(c)4iii; and

16. The text of any changes between the rules as proposed and as adopted, specifically indicating additions and deletions.

(c) Along with a notice of adoption pursuant to (a) and (b) above, the agency shall also complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and of this chapter.

### **1:30-6.2 Time for filing notice of adoption**

(a) No notice of adoption, other than that for an emergency rule, organizational rule or a Federally required rule, shall be accepted for filing until either 60 days after the submission of the notice of proposal by the Office of Administrative Law to the Senate and Assembly or the passage of whatever comment period is established under N.J.A.C. 1:30-5.4(a), whichever is later.

(b) Any notice of adoption submitted for filing shall be reviewed by the Office of Administrative Law not more than five business days after the submission deadline for notices of adoption for the issue of the New Jersey Register for which the notice was submitted. Any notice of adoption which is found to be in non-compliance with N.J.S.A. 52:14B-1 et seq. and the rules contained in this chapter shall be subject to the provisions of N.J.A.C. 1:30-1.12.

(c) If a proposal has not been adopted and filed with the OAL within one year from the date the notice of proposal was published in the New Jersey Register, the proposal expires. Before the proposed rule amendment, repeal or readoption can be adopted, the agency must resubmit the notice of proposal for publication in the Register and must comply again with the notice and opportunity to be heard requirements of the Act.

### **1:30-6.3 Variance between the rule as proposed and as adopted**

(a) Where, following the notice of proposal, an agency determines to make changes in the proposed rule which are so substantial that the changes effectively destroy the value of the original notice, the agency shall give a new notice of proposal and public opportunity to be heard.

(b) In determining whether the changes in the proposed rule are so substantial, consideration shall be given to the extent that the changes:

1. Enlarge or curtail who and what will be affected by the proposed rule;
2. Change what is being prescribed, proscribed or otherwise mandated by the rule;
3. Enlarge or curtail the scope of the proposed rule and its burden on those affected by it.

(c) Where the changes between the rule as proposed and as adopted are not substantial, the changes shall not prevent the adopted rule from being accepted for filing. Changes which are not substantial include:

1. Spelling, punctuation, technical, and grammatical corrections;
2. Language or other changes, whose purpose and effect is to clarify the proposal or correct printing errors; and
3. Minor substantive changes which do not significantly enlarge or curtail the scope of the rule and its burden, enlarge or curtail who or what will be affected by the rule, or change what is being prescribed, proscribed or mandated by the rule.

### **1:30-6.4 Expiration date for adopted rule**

(a) Every chapter in the Administrative Code in effect as of January 16, 2001 shall expire on July 1, 2006, unless a different expiration date has been established for the chapter in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter adopted or readopted on or after July 1, 2001 shall expire five years after the chapter's effective date, unless a sooner expiration date is established in accordance with (f) below or no expiration date is required pursuant to (c) below. Every chapter first effective from January 17, 2001 through June 30, 2001 shall, pursuant to Executive Order No. 66(1978), expire five years after the chapter's effective date, unless a sooner expiration date is established for the chapter or the chapter is readopted in accordance with (f) below, or no expiration date is required under that Executive Order. All notices of adoption filed with the OAL shall include the expiration date(s) of the rules affected by the adoption.

(b) Expiration dates shall be fixed at the chapter level. An adopted new chapter shall have an expiration date no more than five years from the chapter's effective date.

(c) No expiration date need be included where the adopting agency establishes in writing that the rules in a chapter are exempt from the expiration date requirement under (c)1 or 2 below:

1. The provisions of the rules are prescribed by Federal law, so that the agency exercises no discretion as to whether to promulgate the rules and as to what is prescribed by the rules, in which case the Federal law shall be cited in the notice of adoption; or

2. The expiration of the rules would violate any other Federal or State law, in which case the Federal or State law shall be cited in the notice of adoption.

(d) The Governor may, upon the request of an agency head, and prior to the expiration date of the rule, continue in effect an expiring rule for a period to be specified by the Governor.

(e) An expiration date shall remain effective, irrespective of any subsequent amendments to the rules, short of a complete repeal and repromulgation of the whole chapter.

1. Any notice of adoption of an amendment to a chapter shall include the expiration date which has been established for the chapter.

(f) In order to maintain the effectiveness of a chapter of rules, the rules must be duly proposed for readoption, adopted and filed prior to the chapter expiration date. Upon the filing of a notice of proposed readoption, the expiration date of the subject chapter shall be extended for 180 days, if such notice is filed with the Office of Administrative Law on or before the chapter expiration date. If the chapter expiration date falls on a Saturday, Sunday or legal holiday, the 180-day expiration date extension shall take effect if the filing of the notice of proposed readoption occurs no later than the next business day after the expiration date. The readopted rules are effective upon filing with the Office of Administrative Law.

1. The new expiration date resulting from the completion of the readoption process shall be calculated from the date of filing of the readoption notice of adoption.

2. Any amendments to readopted rules are effective upon publication of the notice of adoption.

(g) Any readoption of rules which is proposed and could be adopted prior to their expiration date under (f) above, but is not filed for adoption with the OAL until after the rules' expiration date, shall be considered new rules which are effective upon publication of the notice of adoption in the Register. The new expiration date shall be calculated from the date of publication.

(h) Any proposed readoption of rules which expired before filing of the notice of proposal shall be considered proposed new rules.

### **1:30-6.5 Emergency rule adoption and concurrent proposal**

(a) Any agency adopting an emergency rule pursuant to N.J.S.A. 52:14B-4(c) shall comply with the requirements of the adoption procedure. The documents to be filed for an emergency rule adoption shall include:

1. A Certificate of Proposal, Adoption and Promulgation (form OAL APF-[date]) signed by the agency head adopting the emergency rule;
2. A written summary of the subject matter of the emergency rules, which includes a finding that there is an imminent peril which necessitates emergency proceedings; the basis for the finding; and social and economic factors which bear upon the finding;
3. A signed statement from the Governor concurring as to the existence of an imminent peril which justifies the emergency rulemaking proceeding; and
4. The text of the emergency rule.

(b) An emergency rule is effective upon filing with the OAL.

(c) Upon filing with the Office of Administrative Law, the OAL shall transmit the Certificate of Proposal, Adoption and Promulgation, the Governor's signed statement, and a copy of the emergency rule to the President of the Senate and the Speaker of the General Assembly.

(d) To continue the provisions of an emergency rule beyond the statutory 60- day period of emergency (see N.J.S.A. 52:14B-4(c)), the agency may propose the provisions of the emergency rule in a notice of proposal which is filed with the OAL at the same time that the emergency adoption is filed. The notice of emergency adoption shall state that the rule is being proposed concurrently. The concurrent proposal shall comply with N.J.A.C. 1:30-5.1 and may be adopted after the comment period. The adoption of the concurrent proposal shall be effective upon timely filing of the notice of adoption with the OAL. As used in the preceding sentence, "timely" means on or before the expiration date of the emergency rule. Any changes to the readopted rule shall be effective upon publication of the notice of adoption.

(e) An adoption of a concurrent proposal filed after the expiration of the emergency rule shall be effective upon publication in the Register.

(f) The provisions of an emergency rule shall not be readopted as an emergency rule.

### **1:30-6.6 Effective date and promulgation of adopted rule**

(a) The following rules are effective upon filing with the Office of Administrative Law:

1. Any rule adopted as an emergency rule pursuant to N.J.A.C. 1:30-6.5(b) and (d);
  2. Any rule readopted pursuant to N.J.S.A. 52:14B-5.1 (see N.J.A.C. 1:30-6.4(f));
  3. Any rule adopted as an organizational rule pursuant to N.J.S.A. 52:14B- 4(b); or
  4. Any concurrent rule the adoption of which is filed prior to the expiration of the emergency rule.
- (b) Any other adopted rule is effective upon publication in the New Jersey Register.

### **1:30-6.7 Timely filing of notice of adoption**

In order to avoid the expiration of a chapter or a proposed rulemaking, or to avoid a break in effectiveness between an emergency adoption and the adoption of a concurrent proposal, a notice of adoption shall be filed on or before the expiration date of the chapter, proposal or emergency adoption. If such date falls on a Saturday, Sunday or legal holiday, the filing shall occur no later than the next business day after the expiration date.